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*applications for admission *pro hac vice* forthcoming

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

AMERICAN CIVIL LIBERTIES UNION;
BRONX DEFENDERS, INC.; NATIONAL
IMMIGRATION LAW CENTER; and
NATIONAL IMMIGRATION PROJECT OF
THE NATIONAL LAWYERS GUILD,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY and UNITED
STATES DEPARTMENT OF JUSTICE,

Defendants.

Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

C 0606 4129

WHA

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Plaintiffs seek the production of government documents from Defendants, the United States Department of Homeland Security (“DHS”) and Department of Justice (“DOJ”), pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(6)(A) (“FOIA”). Plaintiffs submitted a FOIA request to DHS over one year ago and two FOIA requests to DOJ approximately two months ago. Although FOIA requires Defendants to make a determination on requests within 20 days, Defendants have not produced any documents in response to Plaintiffs’ requests to date. Plaintiffs therefore bring this FOIA action for declaratory and injunctive relief and to compel the immediate processing and production of the agency records improperly withheld by DHS and DOJ.

2. Plaintiffs seek to obtain the release of records regarding “Operation Predator,” an initiative launched by Defendant DHS in July 2003. The stated purpose of Operation Predator is to identify, investigate, arrest, and deport foreign nationals who are sexual “predators” – including “pornographers, child prostitution rings, Internet predators, alien smugglers, human traffickers, and other criminals.” See U.S. Dep’t of Homeland Security, Press Release, *Secretary Ridge Announces “Operation Predator”* (July 9, 2003), available at http://www.dhs.gov/dhspublic/interapp/press_release/press_release_0211.xml.

3. Defendants have widely publicized Operation Predator as an initiative targeting alleged heinous sex offenders. Since the announcement of Operation Predator, hundreds of news reports on the initiative have been published. The great majority of those reports parrot DHS's characterization of Operation Predator as targeting very serious sex offenses, such as child pornography, sexual molestation of children, and sex tourism victimizing children.

4. The Operation Predator documents sought by Plaintiffs go to the heart of FOIA’s statutory purposes of airing government conduct of public concern and preventing the institution of secret laws.

5. First, Plaintiffs seek the release of documents to determine the actual scope of Operation Predator and to verify the Defendants’ public characterization of those arrested pursuant to Operation Predator as heinous sexual “predators.” Defendants have created a high

1 public profile for Operation Predator. DHS issued 65 press releases in the first 180 days of 2006
2 alone. Defendants have publicly announced that as of April 2006, Operation Predator has
3 resulted in arrests by DHS of more than 7,500 persons, nearly half of whom have been removed
4 from the country. Thus, through Operation Predator and accompanying publicity, Defendants
5 have created a public perception that great numbers of noncitizens are sex offenders who have
6 exploited children for, *inter alia*, pornography and prostitution – a perception that may not be
7 borne out by the documents sought by Plaintiffs.

8 6. On information and belief, Operation Predator has not singled out only
9 individuals who have committed particularly heinous sex-related offenses for such harsh
10 treatment, but rather has included a large number of noncitizens convicted of a broadly-defined
11 and sweeping category of offenses. For example, on information and belief, Operation Predator
12 has resulted in the arrest and removal of noncitizens who have been convicted of statutory rape,
13 but who were themselves teenagers who engaged in consensual relations with another teenager.
14 Thus, Operation Predator is not limited to offenses such as child pornography and trafficking of
15 children for prostitution, contrary to the public announcements made by Defendants.

16 7. Second, Plaintiffs seek documents that will show whether Defendants DHS and
17 DOJ – through their respective sub-units, the Bureau of Immigration and Customs Enforcement
18 and the Executive Office of Immigration Review – are failing to follow binding statutes and
19 regulations in the execution of Operation Predator by prejudging individuals arrested pursuant to
20 it. Although Congress has provided that foreign nationals convicted of some types of sex-related
21 offenses are eligible for relief from removal, persons arrested as part of Operation Predator are
22 subjected to a blanket policy or practice of harsh treatment as reviled “sex offenders.” The
23 administrative immigration court system and in particular its appellate body, the Board of
24 Immigration Appeals (“BIA”), have generally denied these individuals immigration relief and
25 ordered them removed, without regard to the individual merits of the cases and the availability of
26 statutory relief.

27 8. The instant action serves the public interest by seeking the disclosure of
28 documents that will enable the public to determine whether Defendants’ implementation of

1 Operation Predator (1) unfairly maligns large numbers of noncitizens who are not in fact “sexual
2 predators” and/or (2) involves secret blanket policies or practices by Defendants that do away
3 with individual consideration of immigration cases, in violation of the Immigration and
4 Nationality Act created by Congress.

5 **JURISDICTION AND VENUE**

6 9. This Court has both subject matter jurisdiction over this action and personal
7 jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction
8 pursuant to 28 U.S.C. §§ 1331 and 1346.

9 10. Venue lies in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §
10 1402.

11 **PARTIES**

12 11. Plaintiff American Civil Liberties Union (“ACLU”) is a nonprofit, nonpartisan
13 organization with more than 500,000 members dedicated to the principles of liberty and equality
14 embodied in the Constitution and this Nation’s civil rights laws. The ACLU Immigrants’ Rights
15 Project was established in 1987 to expand and enforce the civil rights and civil liberties of
16 noncitizens and to combat discrimination against immigrants. The ACLU seeks to improve the
17 quality of justice for all noncitizens and therefore has a keen interest in the just administration of
18 the Nation’s immigration laws. The ACLU Immigrants’ Rights Project maintains offices in
19 Oakland, California, and in New York, New York. The ACLU Foundation of Northern
20 California is a regional affiliate of the ACLU with a membership of 50,000, and maintains its
21 office in San Francisco, California.

22 12. Plaintiff Bronx Defenders, Inc., is a non-profit law firm in New York City that
23 provides integrated criminal and civil legal and social services to indigent people accused of
24 crimes in the Bronx. The Bronx Defenders’ Civil Action Project offers comprehensive legal and
25 social services to minimize the severe and often unforeseen fallout from criminal proceedings
26 and to facilitate the reentry of the organization's clients into the community. As an organization
27 that represents thousands of noncitizen clients each year, the Bronx Defenders is acutely
28 interested in the due process rights of noncitizens accused or convicted of criminal offenses.

1 13. Plaintiff National Immigration Law Center ("NILC") is a non-profit organization
2 dedicated to protecting and promoting the rights and opportunities of low-income immigrants
3 and their family members. NILC staff members specialize in immigration law and the
4 employment and public benefits rights of immigrants. NILC conducts policy analysis and
5 impact litigation and provides publications, technical advice, and trainings to a broad
6 constituency of legal aid agencies, community groups, and pro bono attorneys. NILC maintains
7 offices in Oakland and Los Angeles, California, and in Washington, D.C.

8 14. Plaintiff National Immigration Project of the National Lawyers Guild is a non-
9 profit membership organization of immigration attorneys, public defenders, legal workers,
10 grassroots advocates, and others working to secure fair and even-handed enforcement of the
11 immigration laws. The National Immigration Project provides legal training to the bar and the
12 bench about the immigration consequences of criminal conduct and is the author of *Immigration*
13 *Law and Crimes*, a treatise published by Thomson-West on the intersection of the criminal
14 justice system and the immigration laws, and other titles including *Immigration Law and*
15 *Defense*, and *Immigration Law and the Family*. The National Immigration Project therefore has
16 a strong interest in full public disclosure of all laws, policies and practices implemented by the
17 Department of Homeland Security.

18 15. Defendant United States Department of Homeland Security ("DHS") is the
19 agency responsible for enforcing federal immigration laws. The Bureau of Immigration and
20 Customs Enforcement ("ICE") is a unit of DHS and is responsible for designing and
21 implementing Operation Predator.

22 16. The Executive Office for Immigration Review ("EOIR") is a unit of defendant
23 U.S. Department of Justice ("DOJ"). EOIR includes the nation's 53 Immigration Courts, in
24 which more than 200 Immigration Judges adjudicate removal proceedings, and the Board of
25 Immigration Appeals, whose judges hear administrative appeals from the decisions of the
26 Immigration Courts.

STATEMENT OF FACTS**Operation Predator**

17. In July 2003, DHS announced Operation Predator, a special initiative to locate, arrest, and deport foreign nationals with a conviction for a sex-related offense. The DHS Fact Sheet issued on the day of the announcement stated: “As the President has made clear[,] anyone who harms a child will be a priority target of law enforcement in this Administration. This comprehensive DHS program will identify child predators and remove them from the United States (if subject to deportation).” U.S. Department of Homeland Security, Fact Sheet: Operation Predator (July 9, 2003), *available at* <http://www.dhs.gov/dhspublic/display?content=1067>.

18. On information and belief, Operation Predator has been implemented to target not only heinous sex offenses such as child pornography and child molestation, but rather a broadly defined category of offenses, including less serious crimes such as statutory rape offenses where the defendant and victim are a teenaged couple in a consensual relationship.

19. Foreign nationals arrested in connection with Operation Predator are singled out for special treatment by DHS. For instance, DHS “has been prioritizing for removal” Predator arrestees.

20. Similarly, the Board of Immigration Appeals typically has directed the denial of immigration relief to Predator arrestees, even where Congress has specified that such persons remain eligible for relief. Despite the governing statutes making relief from removal available, the BIA has denied relief and directed the removal of Predator arrestees.

21. DHS has aggressively publicized the work of Operation Predator. It has issued hundreds of press releases since launching Predator in July 2003, including 65 releases in the first 180 days of 2006 alone.

22. Plaintiffs seek the disclosure and release of records regarding DHS’s conduct of Operation Predator and the treatment of persons arrested in connection with Operation Predator in the administrative immigration courts of EOIR.

FOIA Request to ICE

23. By letter dated May 31, 2005, plaintiffs National Immigration Law Center, American Civil Liberties Union, National Immigration Project of the National Lawyers Guild, Bronx Defenders, Inc., and another nonprofit organization, requested the production of ICE records relating to “Operation Predator” pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“the ICE Request”). As directed by information on the DHS website regarding FOIA requests, the DHS Request was addressed to DHS, not ICE. A copy of the ICE Request is attached as Exhibit A.

24. By letter dated June 16, 2005, DHS acknowledged receipt of the ICE Request, stated that it had referred the request to ICE, and numbered the request “DHS/OS/PO/05-538/Wishnie request.”

25. By letter dated November 4, 2005, ICE acknowledged receipt of the ICE Request as forwarded from DHS.

26. On or about May 1, 2006, an individual identifying himself as an ICE FOIA officer contacted one of Plaintiffs’ counsel, stated that he had located approximately 150 pages of records responsive to the ICE Request, and estimated the total search, processing, and copying as approximately \$75. Plaintiffs’ counsel agreed to pay the approximately \$75 in costs. The ICE FOIA officer stated that, based on counsel’s oral consent to pay this sum, the request would be processed and Plaintiffs billed.

27. However, ICE and the DHS have failed to produce any documents to date in response to the ICE Request.

28. The failure of ICE and DHS to produce documents is a constructive denial of the ICE Request and a refusal to release the records requested.

29. ICE and DHS have failed to disclose and release records responsive to the ICE Request, including but not limited to records containing:

- a. any guidance or memoranda regarding deportation, exclusion, or removal proceedings involving persons identified or arrested as part of Operation Predator;
- b. any guidance or memoranda regarding appeals of deportation, exclusion,

1 or removal cases for persons identified or arrested as part of Operation Predator.

2 30. By failing to respond to the ICE Request and constructively denying the request,
3 ICE and DHS have frustrated Plaintiffs' efforts to gain access to information of significant public
4 concern related to Operation Predator.

5 31. Plaintiffs have a statutory right to the records they seek and there is no legal basis
6 for Defendant DHS's failure to disclose them in full.

7
8 **First FOIA Request to EOIR**

9 32. By letter dated March 29, 2006, Plaintiffs American Civil Liberties Union,
10 American Immigration Law Foundation, Bronx Defenders, Inc., National Immigration Law
11 Center and National Immigration Project of the National Lawyers Guild, and another nonprofit
12 organization, submitted a request pursuant to the Freedom of Information Act, 5 U.S.C. § 552,
13 for the production of EOIR records relating to the treatment by the BIA and the Immigration
14 Courts of noncitizens arrested or convicted of a sex offense ("EOIR Request #1"). A copy of
15 Plaintiffs' request is attached as Exhibit B.

16 33. By letter dated April 4, 2006, EOIR acknowledged receipt of EOIR Request #1.
17 However, to date, EOIR has failed to provide any substantive response to EOIR Request #1.

18 34. The failure of EOIR to respond is a constructive denial of EOIR Request #1 and a
19 refusal to release the records requested.

20 35. EOIR and DOJ have failed to disclose records responsive to EOIR Request #1
21 including but not limited to:

22 a. any guidance, memoranda, or other communication regarding the
23 treatment of deportation, exclusion, or removal cases before the BIA involving persons
24 identified or arrested as a result of a criminal conviction for a sex-related offense;

25 b. any guidance, memoranda, or other communication regarding the
26 treatment of deportation, exclusion, or removal cases before the Immigration Courts
27 involving persons identified or arrested as a result of a sex-related offense;

28 c. any guidance, memoranda, or other communication regarding "Operation

Predator.”

36. By failing to respond to EOIR Request #1 and constructively denying the request, EOIR and DOJ have frustrated Plaintiffs’ efforts to gain access to information of significant public concern related to Operation Predator and the treatment by the BIA and Immigration Courts of cases involving persons convicted of an alleged sex offense.

37. Plaintiffs have a statutory right to the records they seek, and there is no legal basis for EOIR’s failure to disclose them in full.

Second FOIA Request to EOIR

38. By letter dated March 29, 2006, Plaintiffs American Civil Liberties Union, Bronx Defenders, Inc., National Immigration Law Center, and National Immigration Project of the National Lawyers Guild, and other nonprofit organizations, submitted a request pursuant to the Freedom of Information Act, 5 U.S.C. § 552, for production from EOIR of copies of BIA decisions since January 1, 2000, in which the respondent in the immigration proceeding (1) was arrested, charged, and/or convicted of a sex-related offense or (2) sought enumerated forms of immigration relief (“EOIR Request #2”). Plaintiffs sought, as an alternative to copies of the complete BIA decisions, a list of such decisions, together with certain identifying information and the disposition of the cases. A copy of EOIR Request #2 is attached as Exhibit C.

39. By letter dated May 9, 2006, EOIR denied EOIR Request #2. The denial letter stated that “BIA decisions from 2002 to the present are available for inspection at EOIR’s law library.” The denial letter did not note that EOIR Request #2 covered BIA decisions dating from January 1, 2000. The denial letter further stated EOIR “cannot provide” the requested alternative information, consisting of a list of cases with accompanying information, yet added: “We might be able to provide a list of cases seeking the relief, but the cross referenced information is not tracked in our computer.”

40. By letter dated May 24, 2006, Plaintiffs and other requestors filed a timely administrative appeal of EOIR’s denial of EOIR Request #2 with the DOJ Office of Information and Privacy (“OIP”), the DOJ unit that handles FOIA appeals.

1 41. By letter dated June 2, 2006, DOJ OIP acknowledged receipt of Plaintiffs'
2 administrative appeal.

3 42. To date, OIP has not adjudicated Plaintiffs' administrative appeal of the denial of
4 EOIR Request #2, even though the Freedom of Information Act requires that administrative
5 appeals be decided within 20 days. 5 U.S.C. § 552(a)(6)(A)(ii).

6 43. By failing to respond to EOIR Request #2 and the administrative appeal of its
7 denial and by constructively denying the request, DHS and DOJ have frustrated Plaintiffs' efforts
8 to gain access to information of significant public concern related to Operation Predator and the
9 treatment by the BIA and Immigration Courts of cases involving persons convicted of an alleged
10 sex offense.

11 44. Plaintiffs have a statutory right to the records they seek, and there is no legal basis
12 for EOIR's failure to disclose them in full.

13
14 **FIRST CLAIM FOR RELIEF:**

15 **Defendant DHS Failed to Disclose and Release Records Responsive**
16 **to the ICE Request**
17

18 45. Plaintiffs repeat and re-allege each and every allegation contained in the
19 foregoing paragraphs as if repeated and incorporated herein.

20 46. DHS and ICE have violated Plaintiffs' rights to ICE records under 5 U.S.C. §552.
21

22 **SECOND CLAIM FOR RELIEF:**

23 **Defendant DOJ Failed to Disclose and Release Records Responsive**
24 **to EOIR Requests #1 and #2**
25

26 47. Plaintiffs repeat and re-allege each and every allegation contained in the
27 foregoing paragraphs as if repeated and incorporated herein.

28 48. The DOJ, the government department responsible for FOIA requests to the EOIR,

1 has violated Plaintiffs' rights to EOIR records under 5 U.S.C. §552.

2
3 **THIRD CLAIM FOR RELIEF:**

4 **Defendants DHS and DOJ Have Failed to Affirmatively Disclose**
5 **Records Responsive to Plaintiffs' Requests**
6

7 49. Plaintiffs repeat and re-allege each and every allegation contained in the
8 foregoing paragraphs as if repeated and incorporated herein.

9 50. Defendants' failure to make available to the public records regarding their
10 treatment of foreign nationals arrested in connection with Operation Predator violates 5 U.S.C. §
11 552(a)(1)-(2).

12
13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs respectfully request that this Court:

- 15 (1) Declare that Defendants' refusal to disclose the records requested by Plaintiffs is
16 unlawful;
- 17 (2) Order Defendants to make the requested records available to Plaintiffs;
- 18 (3) Award Plaintiffs their costs and reasonable attorneys' fees in this action as provided
19 by 5 U.S.C. § 552(a)(4)(E); and

20 ///

21 ///

(4) Grant such other and further relief as this Court may deem just and proper.

Dated: June 30, 2006

Respectfully submitted,

LUCAS GUTTENTAG
CECILLIA D. WANG
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
405 14th Street, Suite 300
Oakland, CA 94612

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NIGHTINGALE, LLP
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San Francisco, CA 94104

By:


CECILLIA D. WANG

Attorneys for Plaintiffs
AMERICAN CIVIL LIBERTIES UNION;
BRONX DEFENDERS, INC.;
NATIONAL IMMIGRATION LAW
CENTER; and NATIONAL
IMMIGRATION PROJECT OF THE
NATIONAL LAWYERS GUILD

PROOF OF SERVICE

I, Cecillia D. Wang, declare as follows:

I am a member of the bar of this Court, I am over the age of eighteen years, and am not a party to the within action.

On this day, I served one copy of the foregoing COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and CIVIL COVER SHEET on the following in the manner indicated:

Kevin Ryan
United States Attorney
Attn: Civil Process Clerk
United States Attorney's Office
450 Golden Gate Avenue, 11th Floor
San Francisco, CA 94102

Via Hand Delivery

Alberto Gonzales
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

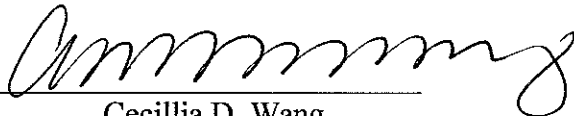
Via Certified Mail

Michael Chertoff
Secretary of Homeland Security
U.S. Department of Homeland Security
Washington, D.C. 20528

Via Certified Mail

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Dated: June 30, 2006
Oakland, California


Cecillia D. Wang

A

IMMIGRANT RIGHTS CLINIC
WASHINGTON SQUARE LEGAL SERVICES, INC.
245 SULLIVAN STREET, 5TH FLOOR
NEW YORK, NEW YORK 10012
TEL: 212-998-6430
FAX: 212-995-4031

NANCY MORAWETZ
MICHAEL J. WISHNIE
Supervising Attorneys

May 31, 2005

Departmental Disclosure Officer
Department of Homeland Security
Washington, DC 20528

Re: Freedom of Information Act Request

Dear Sir or Madam:

This letter constitutes a request made under the Freedom of Information Act, 5 U.S.C. § 552, on behalf of the National Immigration Law Center, American Civil Liberties Union Foundation Immigrants' Rights Project, the National Immigration Project of the National Lawyers Guild, The Bronx Defenders, Inc., and Washington Square Legal Services, Inc. We request all U.S. Immigration and Customs Enforcement records relating to "Operation Predator," including but not limited to:

1. any guidance or memoranda, addressed to or from chief counsel, assistant chief counsel, detention and removal operations, investigations, or other employees, regarding deportation, exclusion, or removal proceedings involving persons identified or arrested as part of Operation Predator, including but not limited to emails and other computer generated information;
2. any guidance or memoranda, addressed to or from chief counsel, assistant chief counsel, detention and removal operations, investigations, or other employees, regarding detention or bond for persons identified or arrested as part of Operation Predator, including but not limited to emails and other computer generated information; and
3. any guidance or memoranda addressed to or from chief counsel, assistant chief counsel, detention and removal operations, investigations, or other employees, regarding appeals of deportation, exclusion, or removal cases or detention or bond for persons identified or arrested as part of Operation Predator, including but not limited to emails and other computer generated information.

If this information is not kept in a succinct format, we request the opportunity to view the records in your offices. We agree to pay search, duplication, and review fees of up to \$100.00. If the fees amount to more than \$100.00, we request a fee waiver pursuant to 5 U.S.C. §§ 552(a)(4)(A)(ii)(ID), (a)(4)(A)(iii), as the information is not sought for commercial uses and its

disclosure is in the public interest, because it is likely to contribute significantly to public understanding of the operations and activities of government and is not primarily in the commercial interests of the requester.

If this request is denied in whole or in part, please justify all deletions by reference to the specific exemptions of the Act. In addition, please release all segregable portions of otherwise exempt material. We reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

Pursuant to 5 U.S.C. §§ 552(a)(6)(A)(i), we expect a response within the 20 day statutory time limit. If you have any questions in processing this request, I can be contacted by mail at the address above or by telephone at 212-998-6471.

Thank you for your assistance in this matter.

Sincerely,



Michael J. Wishnie

B

IMMIGRANT RIGHTS CLINIC
WASHINGTON SQUARE LEGAL SERVICES, INC.
245 SULLIVAN STREET, 5TH FLOOR
NEW YORK, NEW YORK 10012
TEL: 212-998-6430
FAX: 212-995-4031

NANCY MORAWETZ
MICHAEL J. WISHNIE
Supervising Attorneys

March 29, 2006

U.S. Department of Justice
Executive Office for Immigration Review
Office of General Counsel – FOIA/Privacy Act Requests
5107 Leesburg Pike, Suite 2600
Falls Church, Virginia, 22041

Re: **Freedom of Information Act**
Request

Dear Sir or Madam:

This letter constitutes a request made under the Freedom of Information Act, 5 U.S.C. § 552, on behalf of the American Civil Liberties Union Foundation Immigrants' Rights Project, American Immigration Law Foundation, Bronx Defenders, Inc., Jerome N. Frank Legal Services Organization, National Immigration Law Center, and National Immigration Project of the National Lawyers Guild. We request all records relating to policies, practices, or communications regarding non-citizens who have suffered an arrest or conviction a for sex related offense¹, including but not limited to:

1. any guidance, memoranda, or other communication, addressed to or from Board members, staff attorneys, or any other staff members and employees of the Board of Immigration Appeals (BIA) regarding deportation, exclusion, or removal cases involving persons identified or arrested as a result of a criminal conviction for a sex-related offense, *including but not limited to emails and other computer generated information*; and
2. any guidance, memoranda, or other communication, addressed to or from Immigration Judges, staff attorneys, or any other staff members and employees of the immigration courts regarding deportation, exclusion, or removal cases involving persons identified or arrested as a result of a sex-related offense, *including but not limited to emails and other computer generated information*; and
3. any guidance, memoranda, or other communication, addressed to or from Board members, staff attorneys, or any other staff members and employees of the BIA regarding detention or bond for persons identified or arrested as a result of a sex-related offense, including but not limited to emails and other computer generated information; and

¹ Sex related offenses include but are not limited to, rape, sexual battery, sexual assault, sexual abuse of a minor, lewd acts on a child, child pornography, statutory rape, and any other crime that involves nonconsensual sexual touching or sexual touching of an unconscious victim.

4. any guidance, memoranda, or other communication, addressed to or from Immigration Judges, staff attorneys, or any other staff members and employees of the immigration courts regarding detention or bond for persons identified or arrested as a result of a sex-related offense, including but not limited to emails and other computer generated information; and

5. any guidance, memoranda, or other communication, addressed to or from the Board of Immigration Appeals or the Immigration Judges mentioning the Department of Homeland Security's "Operation Predator" initiative.

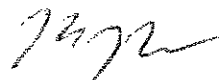
If this information is not kept in a succinct format, we request the opportunity to view the records in your offices. We agree to pay search, duplication, and review fees of up to \$100.00. If the fees amount to more than \$100.00, we request a fee waiver pursuant to 5 U.S.C. §§ 552(a)(4)(A)(ii)(II), (a)(4)(A)(iii), as the information is not sought for commercial uses and its disclosure is in the public interest, because it is likely to contribute significantly to public understanding of the operations and activities of government and is not primarily in the commercial interests of the requester.

If this request is denied in whole or in part, please justify all deletions by reference to the specific exemptions of the Act. In addition, please release all segregable portions of otherwise exempt material. We reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

Pursuant to 5 U.S.C. §§ 552(a)(6)(A)(i), we expect a response within the 20 day statutory time limit. If you have any questions in processing this request, we can be contacted by mail at the address above or by telephone at 212-998-6471.

Thank you for your assistance in this matter.

Sincerely,



Michael Wishnie

C

IMMIGRANT RIGHTS CLINIC
WASHINGTON SQUARE LEGAL SERVICES, INC.
245 SULLIVAN STREET, 5TH FLOOR
NEW YORK, NEW YORK 10012
TEL: 212-998-6430
FAX: 212-995-4031

NANCY MORAWETZ
MICHAEL J. WISHNIE
Supervising Attorneys

March 29, 2006

U.S. Department of Justice
Executive Office for Immigration Review
Office of General Counsel – FOIA/Privacy Act Requests
5107 Leesburg Pike, Suite 2600
Falls Church, Virginia, 22041

Re: **Freedom of Information Act
Request**

Dear Sir or Madam:

This letter constitutes a request made under the Freedom of Information Act, 5 U.S.C. § 552, on behalf of the American Civil Liberties Union Foundation Immigrants' Rights Project, American Immigration Law Foundation, Bronx Defenders, Inc., Jerome N. Frank Legal Services Organization, National Immigration Law Center, and National Immigration Project of the National Lawyers Guild.

We request a copy of all decisions indicating the name of respondent, alien registration number, disposition, or date of disposition for any matter decided by the Board of Immigration Appeals¹ between the dates of January 1, 2000 and the present,² in which:

1. The respondent sought relief under INA § 212(c), INA § 212(h), and/or INA § 240A(a); or
2. The respondent was arrested, charged, and/or convicted of a sex related offense.³

If this information is not kept in a succinct format, we request the opportunity to view the records in your offices. We agree to pay search, duplication, and review fees of up to \$100.00. If the fees amount to more than \$100.00, we request a fee waiver pursuant to 5 U.S.C. §§ 552(a)(4)(A)(ii)(II), (a)(4)(A)(iii), as the information is not sought for commercial uses and its

¹ The requesting parties would also accept, in lieu of a copy of all of the decisions, a list of all of the above requested decisions identified by name of the respondent, alien registration number, date, and disposition, and indicating whether the respondent had been arrested, charged, and/or convicted of a sex-related offense.

² The present is defined as the date on which this Freedom of Information Act request is fulfilled, not when it was received.

³ Sex related offenses include but are not limited to, rape, sexual battery, sexual assault, sexual abuse of a minor, lewd acts on a child, child pornography, statutory rape, and any other crime that involves nonconsensual sexual touching or sexual touching of an unconscious victim.

disclosure is in the public interest, because it is likely to contribute significantly to public understanding of the operations and activities of government and is not primarily in the commercial interests of the requester.

If this request is denied in whole or in part, please justify all deletions by reference to the specific exemptions of the Act. In addition, please release all segregable portions of otherwise exempt material. We reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

Pursuant to 5 U.S.C. §§ 552(a)(6)(A)(i), we expect a response within the 20 day statutory time limit. If you have any questions in processing this request, we can be contacted by mail at the address above or by telephone at 212-998-6471.

Thank you for your assistance in this matter.

Very truly yours,



Michael Wishnie